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HOWELL PURDUE, *Editor*
CHAS. L. NICHOLS, *Advisory Editor*

Bulletin Office: 535 Rowan Bldg., Los Angeles. Phone FA-6161, Station 162

LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)
Secretary's Office: 1126 Rowan Bldg., Los Angeles. Telephone VAndike 5701

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Recent Legislative Changes in the Law of Crimes and Criminal Procedure

By HONORABLE CHARLES W. FRICKE, LL.M., J.D.,
Judge of the Superior Court, Los Angeles County.

From a considerable number of new laws affecting criminal law and procedure, after eliminating those applicable to fish and game and others which are not of special or immediate importance to the lawyer, the following have been given mention either because they involve propositions which require careful thought and consideration or, for other reasons, should be called to the attention of the bench and bar. Such comments as have been added to the statement of the new legislation have been included with the idea that they may be helpful or will call attention to necessary future amendment or change in the law. The writer feels that much is still to be done along legislative lines to modernize our Penal Code and trusts that the sections on criminal law and procedure of the State Bar and local bar associations will give this their immediate attention so that future changes in the law may be crystalized and prepared before the next session of the Legislature.

Arson. Chap. 25

A sweeping change has been made in the law of arson by repealing all of the former provisions (Penal Code sections 447 to 455 inclusive) defining and punishing this crime and enacting new sections governing the malicious burning of property. The new sections declare the law to be:—

Sections 447a and 448a punish "Any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of (here is inserted a description of the property covered by the respective sections) whether the property of himself or of another." Section 447a applies to the burning of dwellings and all kitchens, shops, barns, stables or other outhouses that are parcel thereof or belonging thereto or adjoining thereto and carries a penalty of not less than two nor more than twenty years. Section 448a appears to include all buildings other than those covered by the preceding section as well as public bridges.

The most striking feature in the two sections is that they include property owned by the perpetrator, whereas under the law of arson as it has previously existed, the property must have either been owned by some other person or some other person must have been rightfully in possession or have been actually occupying some part of the building. Thus, under the new law, a person who wilfully and maliciously sets fire to a building of which he is the sole occupant and has the sole right of possesion is guilty while, under the same state of facts, his act was not formerly punishable as arson. These sections also do away with the division of arson into two degrees, the old law punishing as first degree arson the burning in the night time of an inhabited building in which there is at the time some human being, all other kinds of arson being of the second degree. Under the old law first degree arson carried a penalty of from not less than two years to life imprisonment while second degree arson carried a penalty of from one to twenty-five years. It is noticeable that, in spite of the recent trend toward more severe penalties, the penalties for the new forms of arson are materially reduced. There is no difference in the penalty between cases in which the burning is in the night time and cases of daylight burning, nor is it made a more serious penalty to burn an inhabited building in the night time in which there is a human being than to burn the same when unoccupied either in the day or night time. The repealed section, 451, defined the term "burning" and it may be interesting to consider whether, with the definition repealed, the courts will give this term the same meaning in the absence of the defining statute, or whether a new definition will be adopted. Other questions readily suggest themselves which cause us to wonder whether, with the law of arson well covered by statute and settled by judicial interpretation the changes in the law above noted have not been a step backward instead of forward.

Section 449a punishes any person who

wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any grain, harvested or in the field, or vegetable products of any kind, or any personal property, such property being of the value of twenty-five dollars and the property of another person. The crime is punishable by a term of from one to three years in the penitentiary. This section is largely new and was probably directed at and intended as a comparatively easy means of punishing sabotage.

Section 450a provides that any person who wilfully and with intent to injure or defraud the insurer sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any personal property, whether the property of himself or of another, which shall at the time be insured against damage or loss by fire shall be punished by from one to five years in the penitentiary. The reason for this section is not clear to the writer, as it does not appear to include anything which is not covered by section 548 of the Penal Code which punishes the burning, as well as the injury or destruction by other means, of insured property with intent to defraud or prejudice the insurer, and carries a penalty of from one to ten years.

Section 451a punishes any person who wilfully and maliciously attempts to commit the offenses defined in sections 447a, 448a, 449a and 450a, "or who commits any act preliminary thereto, or in furtherance thereof," by a penitentiary term of from one to two years or a fine not exceeding one thousand dollars. In as much as attempts already have ample penalties provided for their punishment (see sections 663, 664 and 665 of the Penal Code), our interest rests with the language quoted. The phrase "in furtherance thereof" should not cause difficulty in its definition as it is not new and many illustrations of acts in furtherance of a particular object will be found in the law of conspiracy. The term "any act preliminary thereto" will prove more bothersome; it evidently was not intended as a phrase synonymous with "in furtherance thereof" and may be so broad in its meaning as to include every act of preparation, the buying of a box of matches or a can of coal oil, the going to the property to look over the possibilities or plan its burning, or the reading of a book in a library upon the subject of pyrolysis. The section also contains a paragraph declaring that, "the placing or distributing of any inflammable explosive or combustible material or substance, or any device in any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually wilfully and maliciously set fire to or burn the same, or to procure the setting fire to or burning of the same, shall for the purposes of this act constitute an attempt to burn such building or property." This latter quotation includes nothing which was not already covered by the law relating to attempts to commit crime and does not fairly begin to include the many acts which, under the general law of attempts, would constitute attempts to violate the sections referred to and punishable as such.

Vagrancy. Chap. 35

A new subdivision, numbered 12, has been added to section 647 which defines and punishes vagrancy. The new subdivision reads, "12. Every person who is a drug addict; provided, that a drug addict within the meaning of this section, is any person who habitually takes or otherwise uses narcotics, and such taking or using is such as to endanger the public morals or health or safety or welfare, or who is so far addicted to the use of such narcotics as to have lost the power of self control with reference to his addiction, except that when such user of narcotics is suffering from an incurable disease or an accident or injury or from the infirmities of age and to whom such narcotics are furnished, prescribed or administered in good faith and in the course of his professional practice by a physician duly licensed in this state and who is in attendance upon such user of narcotics, such person shall not be held to be a drug addict within the meaning of this section." In other words, patients legitimately given narcotics within the terms of the State Poison Act are not included in this classification of vagrants. The section does include the addict whose addiction makes him anti-social. When we consider that the cost of the narcotic drug is, on the average, twice the earning power of the addict and that the difference between the cost of the drug plus the cost of living and the earnings of the addict must come from some anti-social activity, the reason for the new subdivision is apparent.

Misdemeanor Prisoners — Good Time Allowance. Chap. 114

Section 1614a, a new section, authorizes the county board of parole commissioners to allow to prisoners, in either the county jail or any city jail, under sentence of imprisonment, a deduction of five days from each month of confinement upon a favorable report of the jailer as to the prisoner's conduct. This provision definitely removes the doubt which has heretofore existed as to the existence of any authority for the good time allowances made to prisoners in the city and county jails, there being good reason to believe that no authority existed under the former provisions of the statutes for such allowance.

Labor by County Jail Prisoners. Chap. 125

Previously section 1613 provided that prisoners serving misdemeanor sentences in the county jail might be required, by order of the board of supervisors, "to perform labor on the public works or ways in the county," but did not otherwise specify the work which might be required. An amendment to this section reads, "The phrase 'labor on the public works' as used in this section shall include among other things clerical and menial labor in the county jail or in the camps maintained for the labor of such persons upon ways in the county."

Restitution A Condition of Parole. Chap. 158

While not included in the Penal Code, it is worthy of note that, under an amendment to the parole commissioners act, the State board of prison directors "may, upon granting parole to any prisoner hereafter convicted, sentenced and incarcerated in the state prisons, provide for restitution of property illegally obtained by said prisoner, as a condition of parole." This is a step in the right direction by removing the profit from crime. It is too bad that the provision for restitution was limited to "property illegally obtained" and did not also include damage caused by the commission of the crime.

Charging Offenses. Chap. 159

Section 952 of the Penal Code remains the same as when enacted in 1927 except that the last sentence has been amended to read, "In charging theft it shall be sufficient to allege that the defendant took the labor or property of another." The amendment adds the words "labor or" to cover the cases where the theft is of labor.

Grand Theft. Chap. 173

Section 487 of the Penal Code is amended by adding thereto a provision "that when domestic fowls are taken of a value exceeding fifty dollars" the same shall constitute grand theft, and also by including within grand theft, along with the other animals already enumerated in the section, those cases where the property taken is a "hog, sow, boar, gilt, barrow or pig." Man's faithful friend, his dog, and a few other animals, still have to have a value of over two hundred dollars before their taking is more than petty theft.

Exhibiting Deadly Weapon. Chap. 204

Section 417, Penal Code, is amended to read, "Every person who, except in self defense, in the presence of any other person, draws or exhibits any firearm, whether loaded or unloaded, or any other deadly weapon whatsoever, in a rude, angry or threatening manner, or who in any manner, unlawfully uses the same in any fight or quarrel is guilty of a misdemeanor." The old statute required the presence "of two or more persons"; and the statute as amended prohibits the exhibition of loaded or unloaded firearms, as well as the deadly weapon previously provided for and exhibition of which was prohibited. Much of this section is covered by section 245, which punishes an assault with a deadly weapon as a felony.

Falsely Representing Public Officer. Chap. 211

A new section, 146a, is added to the Penal Code and provides: "Any person who falsely represents himself to be a public officer and in such assumed character arrests or detains any person or searches the person, building or other property of any person, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year or by both such fine and imprisonment."

Attempted Extortion. Chap. 232

Heretofore the attempt to extort money or property, though one of our really serious offenses, was punishable as a simple misdemeanor. By amendment the penalty for this offense is now imprisonment in the county jail for not longer than one year or in the State prison not exceeding five

years, or by fine not exceeding five thousand dollars, or both such fine and imprisonment. This amendment of section 524 makes possible the substantial punishment of the blackmailer. Under the law as it previously existed, if a person were threatened by a blackmailer and made the payment of the money demanded for the purpose of apprehending and detecting the criminal in the presence of witnesses the only punishment which could be meted out was six months in jail, a fine of five hundred dollars, or both such fine and imprisonment.

Escapes from Narcotic Hospital. Chap. 236

As a part of the Narcotic Rehabilitation Act the escape from the State Narcotic Hospital, heretofore not punishable, now carries a penalty of eight months in the county jail, provided that every inmate who, having been convicted of a felony, escapes from said hospital is punishable by imprisonment in the State prison not exceeding two years.

Extradition Expense. Chap. 244

A few years ago section 1557 of the Penal Code was amended to provide that when a prosecution was pending in the Superior Court the expense of returning a fugitive from justice from this State could be advanced by the county auditor, but no such provision was made for prosecutions in inferior courts even though the cases in such courts were pending preliminary examinations for serious felonies. By amendment the county auditor may now advance the extradition expense, "when a warrant has been issued by any magistrate after the filing of a complaint or the finding of an indictment." Unfortunately, the Legislature overlooked the fact that prosecutions by information are just as important as those initiated by complaint or indictment and it would seem that, in cases of prosecution by information, the expense can not be advanced.

California Institution for Women. Chap. 248

This chapter provides for the establishment of an institution for the confinement, care and reformation of women convicted of violating the provisions against the sale, use and possession of narcotics, of vagrancy or any felony the punishment for which is less than death.

(To be Concluded)

August 14, 1929
(*Obviously a Sonnet*)

O day of grief, on which a thousand more
Of untried statutes, acts and code amendments,
Some naked new, some changing the intendments
Of those few remnants that were once the law,
Become effective; and our poor profession,
Beset, in fact o'erwhelmed, with bills abundant,
Adrift upon uncharted seas of words redundant,
In humble ignorance must make confession:
Beneath an avalanche of legislation
Our solons, in one session bifurcated—
Would that at least one part were amputated—
Reduced to naught our years of education;
And all that wisdom for which clients pay us
'Twixt night and morning turned to useless chaos.

J. P. Loeb

The President's Page

EDITOR'S NOTE: *President Guy Richards Crump has delegated the writing of this page for the present issue to* MR. R. P. JENNINGS, *member of the Board of Trustees of the Bar Association.*

The invitation of the president of the Association to write the "President's Page" for the current issue of the BULLETIN affords an opportunity to speak to the younger members of the profession—not by way of advice, but rather by way of encouragement.

Unless human nature has changed since I could rightfully lay claim to a place among the younger members of the bar, discouragements are most likely to come in the first few years after admission. It is only in exceptional cases that the young lawyer obtains easy access to the rewards which await the practicing attorney.

Though passage through the legal portals is comparatively easy, there the way changes and what was before an easy path often becomes a road beset with trials and tribulations. This is the period of discouragement which often daunts even the man of pluck and mettle. He is a courageous soul indeed who does not sometimes falter and hesitate and wonder whether there is somewhere a place for him to rise and place his feet upon the ladder which leads to recognition and success in his profession.

To him I say, "Be not discouraged, for you have within yourself the attributes which lead to ultimate and sure success." A considerable observation, extending over a period of nearly thirty years in the practice, has led me firmly to believe that while the way is often difficult and disheartening, it is neverthelss sure, and in no other profession are the ultimate rewards more certain to come to him who possesses a few necessary attributes. They are honesty, a reasonable degree of intelligence and the ability to work hard and perseveringly.

Absolute honesty and integrity the young lawyer must have. Without them he belongs in no learned profession and cannot advance far. They gain and hold the confidence and trust of his clients and the respect and esteem of his fellow-members in the profession.

A reasonable degree of intelligence is necessary, and may be assumed to be possessed or the newly-admitted lawyer could scarcely have gone so far along the way.

The third indispensable attribute is the ability to work hard and perseveringly on matters entrusted to his care. Without perseverance and hard work one seldom goes far in any business or profession.

These certainly are not difficult characteristics to possess. Every lawyer who has passed his entrance examination should have the first two—honesty and intelligence. The third he either possesses or can acquire.

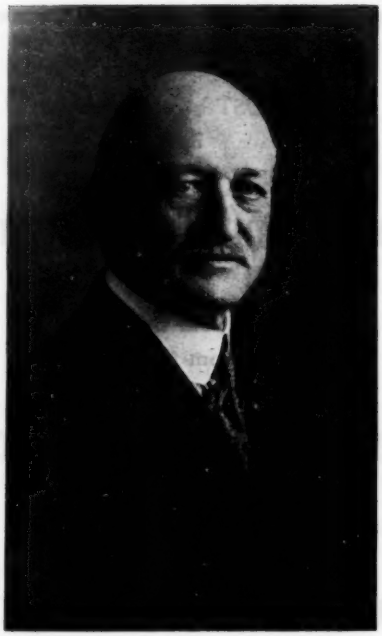
There are, of course, other attributes which may assist and make the way easier but scarcely more certain. The ability to make acquaintances and friends—a natural gift of expression—a fine bearing and appearance — a native wit and humor — all these are of value; but a survey of the members of the bar will soon disclose men lacking a few or all of these qualities who are nevertheless honored, respected and successful lawyers. A little observation will prove, however, that every lawyer who is recognized among his fellows as having attained an honorable and enviable position in the profession possesses the foregoing fundamental qualifications, and it is for this reason that I am led to say that they are the necessary attributes to success.

To the young lawyer, therefore, I give it as my fixed opinion that, having honesty, reasonable intelligence and the ability to work hard, if he employs these attributes in his profession, his ultimate success is certain. In later years when he can no longer qualify as a younger member of the bar, I am convinced that then, if not before, he will be of the same opinion too.

R. P. JENNINGS.

In Memoriam

William Talton Craig



If when a man's life is ended, those with whom he associated are better men and women because of his precept and example, he cannot be said to have lived in vain. William Talton Craig was such a man. His native ability, his legal training, his long and varied experience in the practice of the law, made for him a place as one of the outstanding members of the Bar of California. He was known throughout the United States as an authority on Bankruptcy Law. He was largely responsible for the arbitration statute passed by the California Legislature in 1927.

Mr Craig was born in Watsonville, California, March 8, 1866, and was graduated from the University of California in 1889 with the degree of Ph.B. He attended Hastings College of Law in 1889 and 1890 and was admitted in 1890. He practiced in Los Angeles from 1892 until his death, July 17, 1929. In 1900 he assisted in organizing the Los Angeles Wholsalers' Board of Trade and was its guiding spirit. Some years ago he formed a partnership with State Senator Frank C. Weller who succeeds him as attorney for the Board of Trade. He leaves a widow, L. Etta Craig, and a son, Talton R. Craig.

While Mr. Craig's name is indelibly imprinted in the minds of the Bench and Bar throughout the country as an outstanding member of our profession, those who came in daily contact with him will always remember him for his straight-forward honesty, his unflinching courage, his uniform kindliness of spirit, and his readiness to extend a helping hand to those in need.

THERFORE BE IT RESOLVED, THAT in the passing of WILLIAM TALTON CRAIG the Los Angeles Bar Association and the profession in general have suffered an irreparable loss, but that his memory and example will always remain as guiding stars to present members of the Bar and to future generations of lawyers the country over; that Los Angeles Bar Association extend to his widow and his son its heartfelt sympathy in their bereavement; and that this resolution be spread upon the minutes of the Los Angeles Bar Association as a permanent record, and copies hereof be sent to his widow, Mrs. L. Etta Craig, and to his son, Talton R. Craig.

LOS ANGELES BAR ASSOCIATION
By D. H. LANBERSHEIMER
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Committee.

Some Legal Aspects of the Corporation Franchise Tax*

III. Valuation for Ascertaining Capital Gain or Loss

By W. SUMNER HOLBROOK, JR., *of the Los Angeles Bar*

In a recent volume written as a handbook for attorneys and others engaged in the application of the somewhat involved provisions of our new corporation and franchise tax law, the co-authors devote one of twenty chapters to a discussion of the means of determining gain or loss arising out of sale or exchange of capital assets. The necessity for this chapter is to be found in section 19 of the act, which reads in part as follows:

> "For the purpose of ascertaining the gain derived or loss sustained from the sale or other dispositions of property, real, personal or mixed, ... acquired prior to January 1, 1928, and disposed of thereafter, the basis shall be the fair market value thereof as of said date."

It is to be noted that section 19 does not provide any new basis for determining the market value of such properties, and therefore the law clearly contemplates that values shall be established in the manner previously prescribed by the courts of this State. The mode of establishing value may seem to most of the readers of the BULLETIN a matter too elementary for discussion in its pages. In this the writer would acquiesce, were it not for the fact that the very able authors of the work above referred to have erred in assuming that the very evidential requirements set forth by the board of tax appeals of the Federal courts are also the approved standard in California. In as much as this volume is now on the shelves of most of the attorneys and others dealing with questions under the new act, a discussion of an evidential requirement laid down by our State courts and some of the practical consequences thereof may be timely.

The Federal authorities have held that the value of real estate may be ascertained as of a certain date by evidence showing previous *bona fide* offers for such property at approximately the date in question,[1] or by offers for, or sales of, similar properties; while the courts of this State have long refused to admit evidence of such a nature, stating the rule as follows:

> "But, while the opinion of witnesses thus qualified by their knowledge of the subject are competent testimony, they cannot, upon the direct examination, be allowed to testify as to particular transactions, such as sales of adjoining lands, how much has been offered and refused for adjoining lands of like quality and location, or for the land in question, or any part thereof, or how much the company have been compelled to pay in other and like cases — notwithstanding those transactions may constitute the source of their knowledge. If this was allowed, the other side would have a right to controvert each transaction instanced by the witnesses and investigate its merits, which would lead to as many side issues as transactions and render the investigation interminable."[2]

Similarly the Federal authorities have held that the value of a leasehold may be shown by the present worth of rents paid by a sub-lessee, while the California courts have expressly rejected direct consideration of rents as the basis for determining such values.[4]

1. Appeal of Hilz & Sons Co., 4 B.T.A. 989; A. G. & S. Mining Co. v. Commissioner, 8 B.T.A. 1260.
2. Central Pacific R. Co. v. Pearson, 35 Cal. 262 quoted with approval in Estate of Ross, 171 Cal. 64, 66.
3. Shaffer v. Commissioner, 9 B.T.A. 504.
4. County of Los Angeles v. Signal Realty Co., 86 Cal. App. 704.

*EDITOR'S NOTE: *This is the third of a series of four articles by Mr. Holbrook, dealing with the recently enacted Bank and Corporation Franchise Tax Act. The writer of the series is a member of the firm of Holbrook, Taylor and Tarr. He is General Counsel for the California Taxpayers' Association, and was formerly Deputy County Counsel in charge of taxation and assessment problems and litigation.*

In previous articles in this series, in attempting to determine the meaning of the California statute, we have frequently referred to decisions of the Federal courts and those of other States. Here, however, such authorities are of little or no value. The chapter referred to of an otherwise splendid work is rendered utterly useless because it is predicated throughout upon the thesis that opinion evidence should be relied on only in the absence of specific facts — quite contrary to the rule in this State. If relied upon by the taxpayer it might in fact result in serious consequences to his case.

Not only have the courts of California refused to consider evidence of other sales, but they have gone further and limited the direct testimony of the expert to the statement of his opinion concerning the value of the property in question.[5]

True it is that questions concerning sales and listings of other property are proper

5. City of Los Angeles v. Pederson, 53 C.A.D. 6, 255 Pac. 889.

on cross-examination, but only for the purpose of testing the credibility of the witness and not for the purpose of bringing out such sales as a question of fact:

"It is true that counsel for the defendant, in the cross-examination of Kendall, first brought out the fact of other sales of lands in the district and the prices at which they were made. As cross-examination, the questions and answers were proper, not, however, for the purpose of fixing the value of the land in dispute, but only 'for the purpose of testing the witness' knowledge and impeaching his opinion'."[6]

Nor may they be inquired into on redirect examination, except as the questions on cross-examination have opened up the subject matter:

"But such cross-examination does not justify the plaintiff on redirect examination, which often amounts in practical effect to an examination in chief, to take up the question of sales of other lands and thus show by the witness the prices paid by purchasers of such other lands; for the reason of the rule permitting the fact of the sales of other lands to be gone into on cross-examination ceases with the cross-examination."[7]

Under section 25 of the act, if the commissioner believes the original return discloses a larger income than that returned, he may recompute the same, in which case the taxpayer must file a written protest if he wishes later to contest the recomputation. The protest must be under oath. The commissioner must thereafter hold an oral hearing on the protest, and in the event the protest is not allowed, the taxpayer may take an appeal to the State board of equalization, the finding of which, the act sets forth, shall be "final." Also, under section 30, the taxpayer may, after payment of the

6. Reclamation Dist. No. 730 v. Inglin, 31 Cal. App. 495, at page 500.

7. Reclamation Dist. No. 730 v. Inglin, 31 Cal. App. 495, at page 500.

Special announcements by law firms of new locations and new associations are most effectively made to the profession through the pages of the BULLETIN. *In addition, such announcements serve as a manifestation of good-will toward and co-operation with the* BULLETIN *in its program of constructive endeavor for the welfare of the Bar Association.*

tax, bring an action for the refund thereof, *but no such action may be filed unless a protest was filed previously with the commissioner.*

In the last article of this series, we shall discuss in detail problems arising from the protest and refund provisions of the act. It is sufficient to point out here that the refund action, like the present action for the recovery of local property taxes in the Political Code section 3819, apparently rests solely upon the grounds set forth in the protest. Furthermore, under existing authorities concerning the finality of decisions of a board of equalization upon questions of valuation, the power of a court later to set aside such decisions rests solely upon a showing of fraud, actual or constructive, on the part of the board. Therefore, in a subsequent suit for refund of taxes,based upon a question of valuation, the action is in the nature of certiorari, and is not a trial *de novo.* Such a proceeding must naturally rest upon the nature of the record made before the board of equalization; and, if no competent evidence was there produced by the complaining party before said board, it is evident that he would lose his subsequent action for refund.[8]

It would seem imperative that a taxpayer should at each step in the above procedure protect his eventual record before the court by relying at all times only upon such evidence as would be competent in a court of law, and objecting to the use by the State of any evidence not so competent. Therefore, the original protest filed with the commissioner, where based upon a question of valuation, should be supported by affidavits of competent expert witnesses. Such affidavits should be a counterpart of what would be the direct testimony of such witnesses. It should state in full not only their general and specific qualifications, but also the basis upon which they arrived at their opinions as to the market value on January 1, 1928. Of course, as pointed out above, it should not refer to other specific transactions for the same or similar properties. However, such affidavit should contain such detail as should show the reasons why the witnesses arrived at their opinion.

Market value is, of course, the value of the property for its highest and best use where the use is not of a purely speculative or fanciful purpose.[9] It also includes the value of the property in conjunction with other property held by the same owner.[10] It is, therefore, evident that the affidavit is not satisfactory unless the reasons of the witness are set forth in full. If these are facts peculiar to the case, as a case upon which the opinion is availability for subdivision purpose, presence of mineral deposits or use in conjunction with other properties of the applicant, such matters should be set forth *in extensio,* although no departure from competent evidentiary matter should be permitted even though temporarily it seems to aid the case.

The oral hearings before the commissioner and before the State board of equalization will undoubtedly be of an informal

(Continued on Page 380)

8. See Blinn Lumber Company v. County of Los Angeles, L. A. 11234. In this case the applicant before the board of equalization failed to produce evidence before the board of equalization sufficient to overcome the position of the assessor as held by the court, and the trial court refused to admit testimony as to the fact of over-valuation, because of this failure. The appeal is still pending before the Supreme Court.
9. Sacramento R.R. Co. v. Heilbrun, 156 Cal. 408.
10. Manufacturing Co. v. Gilford, 64 N. H. 337, 348-50. State v. Carragan, 37 N. J. Law 264, 265-8. New York, Lake Erie and Western R.R. Co. v. Yard, 43 N. J. Law 632, 634-7.

The Set-Up of the Bank for International Settlements Proposed by the Committee of Experts on Reparations, Owen D. Young, Chairman

By REUEL L. OLSON *of the Los Angeles Bar*

(Continued from last issue)

The entire administrative control of the bank is to be vested in the Board of Directors whose duty it shall be to supervise and direct the operation of the Bank and in general so to act as to carry out those purposes of the plan committed to the administration of the Bank.

The Board of Directors shall be made up in the following manner:

"(1) The Governor (or as the case may be the Chief Executive Officer) of the central bank of each of the seven countries to which members of the present committee belong, or his nominee, shall be a director of the bank ex officio. Each of these governors shall also appoint one director being a national of his country and representative either of finance or of industry or commerce.

"In case the Governor of any central bank shall be unable to act either officially or unofficially according to the provisions of this paragraph, or refrain from doing so, action shall then be taken in accordance with the alternative procedure given in section 12 of this outline."

Section 12 just referred to contains the following paragraphs:

"If in the process of organizing the bank or in the performance of its functions after establishment it is found that the central bank of any country or its Governor is unable to act officially or unofficially in any of the capacities provided in this outline, or refrains from so acting, alternative arrangements not inconsistent with the laws of that country shall be made.

"In particular the Governors of the central banks of the countries whose nationals are members of the present committee or as many of them as are qualified to act, may invite to become members of the Board of Directors of the bank two nationals of any country, the central bank of which is eligible under this outline to take part in forming the board of the bank but does not do so. The two nationals of that country upon acceptance of the invitation, shall be qualified to act in the capacity of directors of the Bank as provided in this outline.

"Further, the directors of the bank shall be authorized to appoint in lieu of any central bank not exercising all or any of the functions, authorities or privileges which this outline provides that central banks may or shall exercise, any bank or banking house of widely recognized standing and of the same nationality.

"Such bank or banking house upon appointment and acceptance shall be entitled to act in the place of the central bank in any or all capacities appropriate to central banks under this outline, provided only that such action is not inconsistent with the laws of the country in question."

During the period of the German annuities the governor of the Bank of France and the president of the Reichsbank may each appoint, if they so desire, one additional director of his own nationality being a representative of industry or commerce.

The period of the German annuities above referred to continues until 1988.

The governor of the central bank of each of the other countries participating in the share ownership of the bank, that is in each of the countries to which members of the present committee come, shall furnish a list of four candidates of his own nationality for directorships.

"Two of the candidates on each list shall be representatives of finance, and the other two of industry or commerce. The Governors in question may themselves be included in this list. From these lists the fourteen or sixteen directors mentioned in Paragraphs 1 and 2 above shall elect not more than nine other directors.

"(4) From those first appointed, four groups of five directors shall be chosen by lot. Their terms respectively shall end at the close of each of the first, second, third and fourth years from the establishment of the bank. Subject to this, the term of office of the directors shall be five years, but they may be reappointed.

"(5) In case of vacancy in a position on the Board of Directors arising from death, resignation or other causes, the vacancy shall be filled in the same manner as prescribed for the original appointments. If a vacancy occurs before the expiration of a term, it shall be filled for the remainder of the term only.

"The directors shall elect a chairman annually from among their own number . . . ." and, generally speaking, manage all details of the bank.

That portion of the text of the report of the experts' committee dealing with the loans, discounts and investments of The Bank for International Settlements makes it clear that although the immediate reason for the organization of the bank is to facilitate reparations settlements, nevertheless such additional operations may be undertaken in the future as to the directors seem expedient. To quote:

"The Board of Directors shall determine the nature of the operations to be undertaken by the bank. Such operations shall be consistent with the policies of the central banks of the countries concerned. The bank may in particular have the right (a) to deal directly with central banks, or (b) to deal through central banks which have agreed to act as its agent and correspondent, or (c) to deal with banks, bankers' corporations and individuals of any country in performing any authorized function, provided that the central bank of that country does not enter objection. Whenever any proposed credit operation affecting any particular market comes up for decision the favorable vote of the Governor of the central bank concerned (or his nominees if the Governor is not present) sitting as a member of the Board of Directors or the Executive Committee shall be taken as giving the assent of his central bank. If he declines to give his assent the proposed credit operation shall not be undertaken in his market."

Book Reviews

HARRY GRAHAM BALTER *of the Los Angeles Bar*
Assistant United States Attorney

CRIMINAL CASES OF CALIFORNIA; by John J. Hill, Deputy City Prosecutor, Los Angeles; 384 pages; 1929; published under the auspices of Los Angeles College of Law, University of the West, Los Angeles.

Criminal Cases of California presents to the legal profession of this State a full, yet very concise, treatment of the criminal law of California. The author has the benefit of a wide and varied experience in this particular field of the law, and the result of this has been utilized in the preparation of this handbook for the advocate.

The manner in which Mr. Hill has organized and compiled the material is evidence of careful research and sincerity in his efforts. Every angle of criminal law in this State is given a brief, lucid treatment. The rule as settled is stated and followed by full citations of the code and case-law on the point. A full and well organized index provides an adequate method of quickly locating the law on a given question, and much time is saved by the direct method by which the material is thus made available.

The sections of the volume which deal with the rules of evidence in criminal cases, decisions under the Corporate Securities Act and the Motor Vehicle Acts should prove particularly valuable to the practitioner. The same is true in regard to the treatment of the law under the 1927 Amendments to the Penal Code, and the cases under these new sections are brought down to date.

The manner in which the subject of criminal law is treated marks the book as one intended primarily for the practicing attorney, for all surplusage, historical and descriptive matter have been carefully eliminated. However, the full citations will provide the student with an "open-sesame" to the California cases on any particular point, and thereby the full text of the law on a given question may be readily ascertained.

As a handbook for use in the preparation of trial briefs and in actual court work, attorneys will find *Criminal Cases of California* a good friend to have around.

JACK W. HARDY.

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CORPORATION FRANCHISE TAX

(Continued from Page 368)

character, similar to those now held before county boards of equalization and the existing State hearings. If no official reporter is provided by the State, it certainly would be the part of caution for the applicant to furnish his own reporter. Moreover there is always a tendency in such informal hearings, particularly where the State officials will undoubtedly have had experience under the Federal system, to disregard the rules of evidence referred to above. Under such circumstances, while the applicant's position is more difficult than before a court, persistence as well as tact will be necessary for the taxpayer to secure the full benefits of the provisions of the act.

In conclusion there seems to the writer one outstanding point concerning the valuation provisions of the new act. Taxpayers and counsel attempting to secure the benefits of the valuation provisions must at all times be upon their guard not to rely upon handbooks or texts written by persons whose only experience has been with Federal decisions as to competent evidence on questions of value, and must rely on their own experience, and that of others, with the California authorities. Thus qualified, with tact and insistence, they must persist in putting their faith solely upon that evidence which would be competent under our rules of evidence; otherwise the taxpayer's rights will be seriously jeopardized if not entirely lost.

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